

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #13	CCRB Case #: 201604526	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/24/2016 5:30 AM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 52	18 Mo. SOL 11/24/2017	EO SOL 11/24/2017	
Date/Time CV Reported Wed, 05/25/2016 11:32 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/25/2016 11:32 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. INS Brian Mcgee	00000	898020	DB CRD
2. CPT Thomas Alps	00000	926498	040 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Darell Dennison	3962	943159	042 PCT
2. SGT Gregory Burns	03478	934550	ESS 04
3. DT1 John McClure	01206	889031	ESS 04
4. LCD Hassiem Michel	00000	906829	DBBX
5. DT3 Mason Wang	06547	923016	DBBX
6. DT2 Scott Patterson	03151	911348	DBBX
7. DT3 Vincent Virbukas	07819	920944	DBBX
8. SGT Kevin Odoherty	03206	921025	ESS 04

Officer(s)	Allegation	Investigator Recommendation
A.INS Brian Mcgee	Abuse: INS Brian Mcgee authorized the entry and search of § 87(2)(b)	§ 87(2)(b)
B.CPT Thomas Alps	Abuse: CAPT Thomas Alps authorized the entry and search of § 87(2)(b)	§ 87(2)(b)
C. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 25, 2016, § 87(2)(b) filed this complaint over the phone with the CCRB.

Late in the evening on May 23, 2016, a § 87(2)(b)-old girl, § 87(2)(b) ran away from the home of her father, § 87(2)(b) located at § 87(2)(b), in the Bronx. § 87(2)(b) reported her missing after being unable to find her, and DT Vincent Virbukas and DT Scott Patterson, both of the Bronx Detective Bureau, went to his home to investigate. Searching for § 87(2)(b) the detectives went with § 87(2)(b) to § 87(2)(b) where § 87(2)(b)'s mother lives in § 87(2)(b) on the first floor. Multiple unidentified officers had gone to the location before them to look for the child, arriving sometime in the early morning hours of May 24, 2016.

§ 87(2)(b)'s mother was not there at the time, but her brother § 87(2)(b) was. § 87(2)(b) denied that § 87(2)(b) was in the apartment, and refused to let the officers inside to check. Many officers mobilized to the location from numerous commands, and the incident was reported over the radio as a barricaded perpetrator, possibly in custody of a missing child. The Bronx duty captain, CAPT Thomas Alps, responded to the location, and was eventually followed by INS Brian McGee, the Bronx duty inspector. They decided to have ESU respond to the scene in case they needed to breach the apartment door and force their way in.

Negotiations continued with § 87(2)(b) for approximately three hours, and he continued to deny that § 87(2)(b) was in the apartment and refuse to allow officers to enter without a warrant. CAPT Alps spoke with § 87(2)(b) through his closed door and at one point through the window of the apartment. § 87(2)(b) refused to give CAPT Alps permission to enter the apartment, and CAPT Alps could not verify that § 87(2)(b) was inside. Officers took several additional investigative steps to try and determine if § 87(2)(b) was in the apartment, including canvassing the building for witnesses, and speaking with § 87(2)(b)'s mother and other family members. None of the family members they spoke with knew where § 87(2)(b) was, but one neighbor in § 87(2)(b) had seen her that night, after she had run away from § 87(2)(b)'s home. Eventually, at approximately 5:30 a.m., INS McGee and CAPT Alps jointly decided to force entry into the apartment without a search warrant or consent (**Allegations A and B**).

ESU officers pried open the door to the apartment, and introduced a remote controlled robot inside, which had a video camera attached. The officers were able to search the apartment with the robot, reviewing the footage on a live feed. They looked through all the rooms of the apartment, and found only § 87(2)(b) who was seated in a living room, inactive. ESU officers entered the apartment, apprehended § 87(2)(b) and searched the apartment. They determined that § 87(2)(b) was not at the apartment. § 87(2)(b) was released after the search. At one point, § 87(2)(b) approached an unidentified officer and inquired about his broken door. The officer replied, "Fuck you, we don't have to fix shit," (**Allegation C**). § 87(2)(b) was not arrested or charged with any crime, and officers left the area. § 87(2)(b) was found later that week; she was staying at another relative's house.

At some point after the officers entered the apartment, a § 87(2)(b) van arrived at the location, and filmed the officers outside on the street. A reporter later interviewed § 87(2)(b) and a story about the incident was broadcast later that day.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- Due to the initial allegations of property damage, this case was not eligible for mediation.
- As of September 28, 2016, no Notice of Claim related to this incident has been filed with the NYC Comptroller's Office (Board Review 01).
- A § 87(2)(c) [REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) [REDACTED] or § 87(2)(b) [REDACTED] (Board Review 03).
- INS McGee has been the subject of two prior CCRB allegations across two cases during his 25 year tenure with the NYPD. One was an allegation of an improper stop, which was exonerated, and the other was an allegation of a threat of force, which was unfounded (Board Review 04).
- CAPT Alps has been the subject of ten other CCRB allegations across seven cases during his sixteen year tenure with the NYPD. None of the allegations have been substantiated. An allegation of an improper entry was made against CAPT Alps in one previous case, and it was closed as exonerated (Board Review 05).

Findings and Recommendations

Explanation of Subject Officer Identification

- The entry of § 87(2)(b) [REDACTED] apartment is being pled against CAPT Alps and INS McGee. All the officers interviewed indicated that the decision to enter the residence was made by CAPT Alps and INS McGee. CAPT Alps and INS McGee both took responsibility for the decision to enter the apartment in their CCRB interviews.
- The investigation was unable to identify the officer who allegedly said to § 87(2)(b) [REDACTED] "Fuck you, we don't have to fix shit." There are several reasons for this. First, § 87(2)(b) [REDACTED] could describe this officer only as a white male, in street clothes, of average height and build (Board Review 06). The investigation was unable to identify any officers at the scene fitting this description. The only white male not in uniform who was identified as being at the incident was DT Virbukas, who was wearing business attire. Secondly, due to the nature of the incident and the large protracted mobilization it produced, a large number of officers responded from multiple different commands, and for many of them their presence went undocumented. Additionally, only minimal documentation was prepared about the incident, as it did not result in any arrests.

Allegations not pleaded

- **Force:** The use of force is not being pled because, as it was described by § 87(2)(b) [REDACTED] the force used against him was putting him on the ground and handcuffing him, which is not excessive.
- **Abuse of Authority:** The damaging of § 87(2)(b) [REDACTED] door is not being pled, as the door was damaged only incident to the officers' entry into the apartment.

Allegation A – Abuse of Authority: INS Brian McGee authorized the entry and search of

§ 87(2)(b)

§ 87(2)(b)

Allegation B – Abuse of Authority: CAPT Thomas Alps authorized the entry and search of

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

The circumstances of the entry are not in dispute: officers entered § 87(2)(b) apartment without a warrant, and without consent, based on the belief that a missing child was inside. The investigation into § 87(2)(b)'s disappearance spanned several hours and involved numerous officers from multiple commands; however, all officers gave relatively consistent testimony regarding the evidence that suggested § 87(2)(b) was in § 87(2)(b) apartment, and the fact that all relevant information was relayed to INS McGee and CAPT Alps (Board Review 08, 09, 10, 12, 14).

§ 87(2)(b) stated that, when § 87(2)(b) first went missing, he suspected that she could be at the house of her mother, who does not have custody of their children, because § 87(2)(b) frequently goes there. One of § 87(2)(b)'s older daughters called their mother, reached § 87(2)(b) as the mother was ill and in the hospital that night. § 87(2)(b) alleged that, following this phone call, his older daughter told him that § 87(2)(b) had said that § 87(2)(b) was with him at that time. § 87(2)(b) refused to answer subsequent calls. § 87(2)(b) and his older daughter reported all this to DT Patterson and DT Virbukas when they arrived (Board Review 07).

§ 87(2)(b) gave a different version of this conversation, saying that § 87(2)(b) called him numerous times that night asking him where § 87(2)(b) was. He told § 87(2)(b) that he did not know, but had seen her earlier that day, and then refused to answer subsequent calls from § 87(2)(b).

When officers went to § 87(2)(b) and spoke with § 87(2)(b) he repeatedly denied that § 87(2)(b) was present, and refused to let the officers inside to check. While at the location, officers canvassed the buildings for witnesses who may have seen § 87(2)(b) that night. DT Patterson spoke with one neighbor who stated that she had seen § 87(2)(b) that night, after she had been gone missing. § 87(2)(b) had come to her door, barefoot, stating that she had been thrown out of § 87(2)(b)'s home. The neighbor, who knew § 87(2)(b) and her family, brought § 87(2)(b) down to her mother's apartment, and was met outside the apartment by § 87(2)(b) who took custody of § 87(2)(b). The neighbor did not see § 87(2)(b) go into his apartment with § 87(2)(b) but left them in the hallway together. None of the officers interviewed testified that there was any evidence that § 87(2)(b) was inside the apartment aside from the reported phone call between § 87(2)(b) and § 87(2)(b)'s daughter, and the statements of the neighbor.

Both CAPT Alps (Board Review 13) and INS McGee (Board Review 11) stated that they considered this to be an emergency situation, and entered to ensure the safety of the missing child. No attempts were made to obtain a warrant. INS McGee stated that he was not aware of what an "emergency warrant" was, and did not believe that they would be able to obtain a warrant to enter § 87(2)(b) apartment without waiting for the courts to open and applying for one, which he estimated would take until 1:00 p.m. that afternoon. CAPT Alps stated that he believed a warrant would have taken between six and seven hours to obtain, and he made no attempts to do so because he had established a dialogue with § 87(2)(b) and thought that he was going to voluntarily open the door. Both CAPT Alps and INS McGee stated in their CCRB interviews that they did not believe a warrant was needed to enter the apartment, because it was an

emergency situation, and both indicated that the intention was never to arrest § 87(2)(b) or search the apartment for contraband or evidence of a crime, but to locate § 87(2)(b).

Both CAPT Alps and INS McGee cited concerns over the welfare of § 87(2)(b) as constituting an emergency. INS McGee stated that he was concerned for § 87(2)(b)'s safety because of her young age, the time of night, and the amount of time she had been missing, and because he found it concerning that § 87(2)(b) would not cooperate with officers trying to find a missing child who was a member of his own family.

CAPT Alps was concerned for § 87(2)(b)'s safety after § 87(2)(b) stopped speaking with officers, as they were no longer sure what he was doing. In addition to INS McGee's concerns, § 87(2)(b)

CAPT Alps had also checked for records of past 911 calls concerning the apartment, and determined that there had been approximately 26 in the recent past, three of which concerned claims of suspected child abuse.

Warrantless entries by law enforcement are presumptively unreasonable. However, under the exception of the emergency doctrine, police officers may enter a residence absent consent or a warrant if their immediate assistance is needed to protect life or property. The courts have established several factors that must be present for the emergency doctrine to apply, among them are reasonable grounds to believe that there is an emergency at hand, and a reasonable basis, approximating probable cause, to associate the emergency with the place being searched. People v. Mitchell, 39 N.Y.2d 173, 347 N.E.2d 607, 383 N.Y.S.2d 246, (1976). (Board Review 15) People v. Rodriguez, 77 A.D.3d 280, 907 N.Y.S.2d 294, 2010 N.Y. App. Div., 2010 NY Slip Op 6530 (N.Y. App. Div. 2d Dep't 2010) (Affirmed) (Board Review 16).

§ 87(2)(g)

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§ 87(2)(g)

Allegation C – Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that, shortly before officers left his apartment, he approached an unidentified officer who he described as a white male, in plainclothes, short, stocky, and in his late 40s. He told the officer that someone had to fix his door, and the officer responded, “Fuck you, we don’t have to fix shit.” None of the officers interviewed testified that this occurred. For the reasons described above, the investigation was unable to identify this officer.

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date